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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,493	03/12/2004	Lindsay Roth	GAO-0001	6601

23413 7590 10/08/2010
CANTOR COLBURN LLP
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EXAMINER

BOUCHELLE, LAURA A

ART UNIT	PAPER NUMBER
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3763

NOTIFICATION DATE	DELIVERY MODE
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10/08/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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CENTRAL REEXAMINATION UNIT

In re Application of	:	
Lindsay Roth et al.	:	DECISION
Application No. 10/799,493	:	TERMINATING
Filed: March 12, 2004	:	REISSUE PROCEEDING
Practitioner Docket No.: GAO-0001	:	

This is a decision terminating the instant reissue proceeding by default based on (1) the expiration of U.S. patent 6,355,023, for which patent the present application requests reissue, and (2) the failure of applicants to respond to the Order to Show Cause mailed by the Office on August 6, 2010.

BACKGROUND

1. Reissue application No. 10/799,493 ("the '493 reissue application") was filed on March 12, 2004, for reissue of U.S. Patent No. 6,355,023 ("the '023 patent") issued March 12, 2002.
2. The Image File Wrapper record for the '493 reissue application reveals that a paper titled "Response To Notice To File Missing Parts Of Application" was filed on November 24, 2004.
3. The Office's financial records reveal that the 7.5 year maintenance fee due by March 12, 2010 (the end of the maintenance fee grace period), was not paid.
4. The '023 patent expired at midnight on March 12, 2010, for failure to pay the 7.5 year maintenance fee that was due.¹ Notice of the expiration of the '023 patent for failure to pay the 7.5 year maintenance fee was published on May 4, 2010, in the *Official Gazette*.²
5. On August 6, 2010, an Order to Show Cause was mailed to applicants, setting a 30-day period for a response showing sufficient cause why the Office should not

¹ See: MPEP § 2506, third paragraph.

² See: <http://www.uspto.gov/web/offices/com/sol/og/2010/week18/TOC.htm#ref3>.

terminate the present reissue proceeding. The Order makes it clear that a failure by applicants to respond to the show cause order within the set 30-day period will result in the termination of the present reissue proceeding by default.

6. The record does not reveal that any response to the August 6, 2010 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired.

DECISION

As pointed out above, the record does not reveal that any response to the August 6, 2010 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired. In addition, there is no record of any filed petition addressing the failure to pay the 7.5 year maintenance fee, as would be required in order to reinstate the '023 patent.

When a patent has expired, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

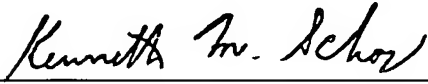
"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, **when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393.] [Emphasis added.]

Since the '023 patent expired for failure to pay the requisite maintenance fee, and applicants have not provided any information to the contrary after being afforded an opportunity to do so, the instant reissue application (reissue proceeding) is hereby terminated. Accordingly, the Technology Center is to proceed to hold the reissue application to be an abandoned application, and process the application accordingly.

CONCLUSION

1. The present reissue application is hereby terminated.
2. The reissue application file will be processed by Technology Center Art Unit 3763 as an abandoned application.

3. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

10-4-10
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